

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARINO DELEON	:	CIVIL NO. 4:06-CV-01567
	:	
Plaintiff	:	(Judge McClure)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
JO ANNE B. BARNHART,	:	
<i>Commissioner of Social</i>	:	
<i>Security Administration,</i>	:	
	:	
Defendant	:	

REPORT AND RECOMMENDATION

The plaintiff commenced this action by filing a complaint on August 11, 2006.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign county pursuant to subdivision (f) or (j)(1).

Local Rule 83.40.2 provides that in Social Security Appeals:

The plaintiff shall cause the summons and complaint to be served upon the defendant in the manner specified by Fed.R.Civ.P. 4(i) within ten (10) days of the date of filing the complaint with the Clerk of Court.

The Procedural Order issued in this case on August 11, 2006, informed the plaintiff of the requirement of Local Rule 83.40.2

Federal Rule of Civil Procedure 4(l) provides that "[i]f service is not waived, the person effecting service shall make proof thereof to the court." Local Rule 4.1 provides that an affidavit of service shall be filed within ten days after service of process is made.

The plaintiff has not filed proof of service of the summons and complaint on the defendant. Since it appears that the plaintiff has not served the summons and complaint on the defendant, by Order of December 4, 2006 the plaintiff was directed to show cause why this case should not be dismissed. Doc. 3. No response to the Order of December 4, 2006 has been filed by the plaintiff.

It is recommended that this case be dismissed based on the plaintiff's failure to serve the defendant with the summons and complaint.

/s/ J. Andrew Smyser
J. Andrew Smyser
Magistrate Judge

Dated: